

FILE COPY

STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL GEOLOGISTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND
SURVEYORS, PROFESSIONAL ENGINEERS SECTION

IN THE MATTER OF THE APPLICATION:

FOR REGISTRATION TO PRACTICE :
AS A PROFESSIONAL ENGINEER OF :

FINAL DECISION
AND ORDER
LS9505101ENG

JAMES R. BRANDT,
APPLICANT. :

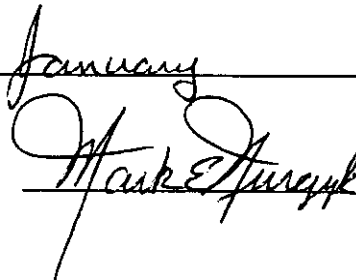
The State of Wisconsin, Examining Board of Architects, Landscape Architects,
Professional Geologists, Professional Engineers, Designers and Land Surveyors, having
considered the above-captioned matter and having reviewed the record and the Proposed
Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto,
filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final
Decision of the State of Wisconsin, Examining Board of Architects, Landscape Architects,
Professional Geologists, Professional Engineers, Designers and Land Surveyors.

The rights of a party aggrieved by this Decision to petition the department for rehearing
and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 19th day of January 1996.



**STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL GEOLOGISTS, PROFESSIONAL ENGINEERS, DESIGNERS AND
LAND SURVEYORS, PROFESSIONAL ENGINEERS SECTION**

IN THE MATTER OF THE APPLICATION
FOR REGISTRATION TO PRACTICE AS A
PROFESSIONAL ENGINEER

PROPOSED DECISION
Case No. LS-9505101-ENG

JAMES R. BRANDT,
APPLICANT.

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

James R. Brandt
S70 W14963 Dartmouth Circle
Muskego, WI 53150

Examining Board of Architects, Landscape Architects,
Professional Geologists, Professional Engineers, Designers
and Land Surveyors, Professional Engineers Section
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

This matter was commenced by the filing of a Notice of Hearing on May 10, 1995. A hearing was held in the above-captioned matter on July 13, 1995. Atty. Roger R. Hall appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The applicant, James R. Brandt appeared in person and by his attorney, Lynn Adelman.

Based upon the record herein, the Administrative Law Judge recommends that the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Professional Engineers Section adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. James R. Brandt , S70 W14963 Dartmouth Circle, Muskego, WI., filed an application under s. 443.04 (1) (d), Stats., for registration to practice as a professional engineer, dated July 23, 1993.
2. An individual applying under s. 443.04 (1)(d), Stats., for registration to practice as a professional engineer is required to submit satisfactory evidence to the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors that he or she has obtained a diploma of graduation or a certificate from an engineering school or college approved by the Board as of satisfactory standing in an engineering course of not less than 4 years.
3. A Board approved engineering course of not less than 4 years is one which is accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology ("ABET") as a program leading to a degree in engineering, or is equivalent to such program.
4. Mr. Brandt received a Bachelor of Science degree in Electrical Engineering Technology ("EET") from the Milwaukee School of Engineering on May, 23, 1986.
5. The Bachelor of Science degree program in Electrical Engineering Technology which Mr. Brandt completed at the Milwaukee School of Engineering is not accredited by the Engineering Accreditation Commission of ABET as a program leading to a degree in engineering. The program is accredited by the Technology Accreditation Commission of ABET as a program leading to a degree in engineering technology.
6. Mr. Brandt's application for registration to practice as a professional engineer was denied on November 18, 1993, on the basis that the EET degree which he received from the Milwaukee School of Engineering is not an engineering degree approved by the Board.
7. At least from January 1, 1990, to November 18, 1993, no application for registration to practice as a professional engineer was granted by the Board under s. 443.04 (1) (a) Stats., or under s. 443.04 (1) (d), Stats., on the basis of an EET degree.
8. At least from January 1, 1990, to November 18, 1993, no Board record exists of any application for registration or of any denial of registration under s. 443.04 (1) (a), Stats., on the basis of an EET degree.
9. In 1992, the Board denied at least two applications under s. 443.04 (1) (d), Stats., on the basis of an EET degree.

CONCLUSIONS OF LAW

1. The Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Professional Engineers Section has jurisdiction in this matter pursuant to ss. 443.04 and 443.09, Stats.

2. The applicant, James R. Brandt has not submitted satisfactory evidence that he has obtained a diploma of graduation or a certificate from an engineering school or college approved by the Board as of satisfactory standing in an engineering course of not less than 4 years, as required under s. 443.04 (1)(d), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the denial of the application of James R. Brandt for registration to practice as a professional engineer be, and hereby is, affirmed.

OPINION

This matter was commenced by the filing of a Notice of Hearing on May 10, 1995. A hearing was held on July 13, 1995. Atty. Roger R. Hall appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Mr. Brandt appeared in person and by Atty. Lynn Adelman, Adelman, Adelman & Murray, S.C.

Following a review of the evidence presented at the hearing, the Administrative Law Judge concluded that the evidence was not sufficient for purposes of making the factual determinations referred to in Judge Mawdsley's Decision, dated February 10, 1995. Therefore, the hearing was reopened on September 8, 1995, by the issuance of an order permitting supplementation of the record. *Interim Decision Permitting Supplementation of the Record.*

The Division of Enforcement's response to the interim decision was filed on October 30, 1995 (*Response to the Order of the Administrative Law Judge For Supplementation of the Record*). Applicant's response was filed on November 22, 1995. *Applicant's Response to Larson Affidavit.* The Division of Enforcement's reply was filed on December 5, 1995. *Response to Applicant's Response to Larson Affidavit.* The hearing was closed on December 5, 1995.

Based upon the evidence presented, Mr. Brandt has not demonstrated that he has completed an engineering course of not less than 4 years from an engineering school or college approved by the Board, as required under s. 443.04 (1)(d), Stats.

Mr. Brandt filed an application for registration under s. 443.04 (1) (d), Stats., to practice as a professional engineer, dated July 23, 1993. His application was denied on November 18, 1993, on the basis that the degree which he received in electrical engineering technology from the Milwaukee School of Engineering is not an engineering degree approved by the Board. Mr. Brandt filed an appeal of his application denial in the Waukesha County Circuit Court. This proceeding was commenced as a result of a Decision issued by Circuit Court Judge Robert G. Mawdsley on February 10, 1995, in which he remanded this matter to the Board for a factual determination and resolution of the following issues:

(1) Does respondent have a policy, extending to both ss. 443.04 (1) (a) and (d), Stats., of not accepting the 4 year EET degree as a 4 year engineering degree?

(a) If so, how long has that policy been in effect?

(b) What evidence is there that the policy has been consistently applied?

(2) Has respondent issued PE licenses under s. 443.04 (1) (a), Stats., to applicants having EET degrees?

(b) If so, when, how many, and under what circumstances?

(3) What is the difference, if any, between the educational requirement in s. 443.04 (1)(a), Stats., and the educational requirement in s. 443.04 (1)(d), Stats.?

After reaching a conclusion on the above questions, respondent should resolve petitioner's application accordingly.

It should be preliminarily noted that there are four methods under s. 443.04 (1), Stats., by which an individual may apply for registration to practice as a professional engineer. Individuals applying for registration under s. 443.04 (1) (a), (b) and (c), Stats., must satisfy certain education and/or experience requirements in addition to passing an examination. Individuals applying for registration under s. 443.04 (1) (d), Stats., must satisfy education and experience requirements, but are not required to pass an examination. Mr. Brandt elected to apply for registration under s. 443.04 (1) (d), Stats.

In response to the first question presented by Judge Mawdsley, based upon the evidence it can be concluded that the Board does have a policy extending to both ss. 443.04 (1) (a) and (d), Stats., of not accepting the 4 year EET degree as a 4 year engineering degree. At least from January 1, 1990 to November 18, 1993, no individual was granted a registration under s. 443.04 (1) (a) or (d), Stats., on the basis of an EET degree. *Response to the Order of the Administrative Law Judge for Supplementation of the Record, Affidavit of Ann Larson.*¹ The Board denied at least two applications under s. 443.04 (1) (d), Stats., in 1992, on the basis of an EET degree obtained from the Milwaukee School of Engineering. *See, references to Kempf and Randals, Exhibit #1.* In addition, since the denial of Mr. Brandt's application in 1993, the Board has denied at least three other applications under s. 443.04 (1) (d), Stats., on the basis of an EET degree. *See references to Piacentine (1994), Polk (1994) and Mancl (1995), Exhibit #1.*

In reference to Board actions prior to January 1, 1990, no record file of registrations exists. However, some information relating to the Board's actions is reflected in the response filed by Mr. Brandt to the affidavit of Ann Larson. At the hearing, statements were included in the record by Mr. Brandt implying that he knew of individuals who had been granted registrations on the basis of an EET degree. *Transcript p. 20, lines 7-8; p. 63, lines 8-14.* A request was made to Mr. Brandt to submit the name of any individual who he contends had been granted a registration by the Board under s. 443.04 (1) (a) or (d), Stats., on the basis of an EET degree. *Order Granting Extension of Time to Supplement Record.*

On November 22, 1995, Mr. Brandt submitted the names of 3 individuals with EET degrees from the Milwaukee School of Engineering who he contends had been granted registrations under s. 443.04 (1) (a), Stats., on the basis of an EET degree. *Applicant's Response to Larson Affidavit.* No Board records were found for 1984 or any other year for one of the individuals noted. The Board records relating to the other two individuals indicate that they were registered between 1982 and 1984 on the basis of examination. *Response to Applicant's Response to Larson Affidavit.* The registration application files relating to these two individuals have been destroyed; therefore, the evidence is not sufficient for purposes of determining whether their applications were granted under s. 443.04 (1) (a), Stats., on the basis of an EET degree. Even if the Board granted their applications on the basis of an EET degree, it is clear from the evidence that such policy is not reflective of the Board's policy in effect at the time of denial of Mr. Brandt's application. The difference in the time period between the grant of their applications and the denial of Mr. Brandt's application is approximately 10 years. Certainly sufficient time to establish a new or revised policy.

¹. The use of the time period, January 1, 1990 to November 18, 1993, is based, in part, on the affidavit of Ann Larson. The Board record files relating to registrations for professional engineers for the time period prior to January 1, 1990, no longer exist. Those files were destroyed pursuant to the public records provisions set forth in chs. 16 and 19, Stats. The November 18, 1993, date, which is the date Mr. Brandt's application for registration was denied by the Board, was selected by the Administrative Law Judge for purposes of establishing what the Board's policy was prior to and as of the date of the application denial. The selection of the November 18, 1993, date also reduced the number of application files, originally 5,000, which the Board staff had to retrieve and examine for purposes of supplementing the record.

In response to the second question presented by Judge Mawdsley, at least from January 1, 1990, to November 18, 1993, no registration was granted by the Board under s. 443.04 (1) (a), Stats., on the basis of an EET degree. In fact, no Board record exists for that time period of any application or denial of registration under s. 443.04 (1) (a), Stats., on the basis of an EET degree. *Affidavit of Ann Larson.*

Finally, Judge Mawdsley questioned the difference, if any, between the educational requirement in s. 443.04 (1) (a), Stats., and the educational requirement in s. 443.04 (1)(d), Stats. The evidence presented on this issue is very limited. Based upon a review of the testimony offered by Dr. DeVries and Ms. Bobholz and the affidavit of Ms. Larson, the evidence can reasonably be interpreted to conclude that the requirements are the same.

First, Dr. DeVries and Ms. Bobholz testified that an individual applying for registration who has a four year engineering technology degree *would not* apply for registration under s. 443.04 (1) (a), Stats. (*Transcript pp. 18-19; 53-54*). In addition, Dr. DeVries testified that an individual may apply for registration under s. 443.04 (1) (a), Stats., only if he or she has an engineering degree accredited by ABET. Dr. DeVries testified as follows (*Transcript pp. 53-54*):

Q. Let's say somebody graduates MSOE, four year ET -- engineering technology degree from MSOE, and they apply under (a), and they take the exams, and they satisfy the other criteria, they get their license, correct?

A. No. No, they don't apply under (a). They would --

Q. Well, let's say they do apply under (a). Let's say somebody applies under (a), and takes the exams, and does he get his license?

A. Only if the -- if the degree is from an engineering -- with a degree accredited by ABET would they be applying under provision (a). It's (a), number one there, is an approved degree and the approved degree is -- the board's policy is only if the individual has a degree from an approved -- engineering degree with the approval coming from the ABET, recognized by ABET.

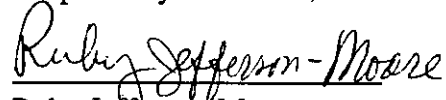
Second, Ms. Larson stated in her affidavit that, at least during the time period from January 1, 1990 to November 18, 1993, no individual has been granted a registration under s. 443.04 (1) (a), Stats., on the basis of an Electrical Engineering Technology (EET) degree. *Response to the Order of the Administrative Law Judge For Supplementation of the Record, Affidavit of Ann Larson*

Mr. Brandt has failed to demonstrated that he has completed an engineering course of not less than 4 years from an engineering school or college approved by the Board, as required under s. 443.04 (1) (d), Stats. Therefore, the Board's decision to deny his application must be affirmed.

Based upon the record herein, the Administrative Law Judge recommends that the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Professional Engineers Section adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 13th day of December, 1995

Respectfully submitted,

A handwritten signature in cursive script that reads "Ruby Jefferson-Moore". The signature is written in dark ink and is positioned above the printed name.

Ruby Jefferson-Moore

Administrative Law Judge

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL GEOLOGISTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS
PROF. ENG. SEC. 1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

January 22, 1996

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)